

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1068 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
 2. To be referred to the Reporter or not? No
 3. Whether Their Lordships wish to see the fair copy of the judgement? No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge?

No

MESSRS OAGKAN TRADERS

Versus

THESALES TAX OFFICER(2)

Appearance:

MR RD PATHAK for Petitioner

M/S MG DOSHIT & CO for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.BALIA. and

MR.JUSTICE A.R.DAVE

Date of decision: 04/12/98

ORAL JUDGMENT (per R. Balia, J.)

The petitioner is a partnership firm registered under the Indian Partnership Act and a dealer registered under the Gujarat Sales Tax Act as well as Central Sales Tax Act. It is engaged in the business of purchasing chicory roots from the farmers and reselling the same

within the State of Gujarat or outside the State of Gujarat. The sales are also made in the course of inter-state trade and commerce.

2. For the calendar year 1974 the assessee has claimed that chicory roots dealt in by the petitioner are exempt from tax generally being covered under wither Entry 8 or 23 of Schedule I appended to the Act and no tax whether under the State Act or the Central Act is payable on the sales made by the petitioner. The tribunal in its order relating to calendar year 1973 has held in favour of the petitioner on 29.9.76. It appears that in view of this position, the assessment for period then pending and subsequent thereto did not take place.

3. The Commissioner, in exercise of his power u/s 42 read with rule 37A of the Gujarat Sales Tax Act, issued show-cause notice for extending the period of completing assessment for the period from calendar year 1976 to 1979 vide different show-cause notices dated 30.7.80 (Annexure A/1), dated 18.10.81 (Annexure A/3), dated 19.9.81 (Annexure A/6) and dated 6.10.82 (Annexure A/13) which ultimately culminated in order dated 29.10.82 (Annexure A/15) by which the limitation for completing assessments for calendar years 1.1.75 to 31.12.79 upto 31.12.1983.

4. Aggrieved with the aforesaid order of extending the period of limitation for completing assessment for the aforesaid period, the present petition had been filed.

5. By order dated 24.7.91, the court permitted the assessing officer to complete the assessments subject to result of the petition.

6. The reason shown in the order (Annexure A/15) for extending the period of limitation for completing assessment for the period between 1.1.75 to 31.12.79 has been stated that 'more time is needed to complete the inquiry under the Gujarat Sales Act and Central Sales Tax Act for the period in question and it is not possible to complete the assessment within the limitation prescribed and for that reason the period is extended.'

7. The question that arises in these circumstances for consideration is whether the impugned order (Annexure A/15) shows valid foundation for extension of time-limit for completion of assessment for any period under the Act.

8. The question has been squarely answered by the

apex court in *Fag Precision Bearings v. Sales Tax Officer (I)* and anr., 104 ITR 143. That was a case in which, shorn of details, the reasons which the Commissioner was required to put in writing under the terms of rule 37-A for staying the assessments which were in progress stated, "since some more time will be taken and the assessment proceedings are not likely to be completed within the prescribed time.... it is considered proper to stay the assessment." While the reason was accepted to be valid by the Gujarat High Court when the same was challenged, on appeal, reversing the decision of the Gujarat High Court in (1993) 90 STC 294, the Supreme Court said,

"To accept the aforesaid as good reason to stay assessment proceedings is to hold that the Commissioner, or the State Government, can give a go-by to the statutory provision prescribing the period during which assessment proceedings shall be completed only because the sales tax authorities have not completed the assessment proceedings within the stipulated time. We cannot accept this as a good reason. The aforesaid power to stay assessment proceedings can be exercised only in extraordinary circumstances and for supervening reasons which cannot be attributed to the default or failure of the assessing authorities..... It is not enough that the order should state, as has been done in the present case, that the assessment proceedings were pending and would take "some more time"."

The ratio is fully applicable to the facts of the present case. The order (Annexure A/15) in the circumstances cannot be sustained.

9. It may however be noticed that though no further proceedings were taken in the case of petitioner against order passed by the tribunal on 29.9.76 holding chicory roots as exempted by Entry 23 of Schedule I, the Sales Tax Tribunal took a different view in the case of *Brooke Bond*, since amalgamated with *Hindustan Lever Ltd.* The issue has now been set at rest by the Supreme Court in appeal arising in those proceedings (Civil Appeal No. 8016/95) decided on 26.8.98. The court has held that, "the essential character of chicory roots did not change by reason of the cutting, slicing and drying" and is exempt under Entry 23 of Schedule 1 of the Gujarat Sales Tax Act. Thus, on merit also, the sale of chicory roots by the petitioner does not fall for taxation being

generally exempt under the State law. Be that as it may, that is not the issue before us, but the fact has been noticed as the learned counsel for the revenue sought to argue that in spite of tribunal taking contrary view in Brooke Bond's case, the assessee did not file revised return to surrender the tax payable on chicory roots suggesting that returns were not bona fide. Suffice it to say that the fact that tribunal, which is not a final authority on question of law, has subsequently taken a contrary view of its earlier view, does not oblige an assessee to abandon his claim to exemption or relief, even in his own case, much less a decision given in other assessee's case.

10. As a result, this petition succeeds. The impugned order (Annexure A/15) dated 29.10.1982 extending period of limitation for completing assessment for the periods 1.1.75 to 31.12.79 is quashed and the assessment orders, if any, made as a result of interim order passed by this court on 24.7.91 which has been subject to decision of this petition, shall also stand vacated. There shall be no order as to costs.

(hn)